

NTSB Order No. EA-4264

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 6th day of October, 1994

Docket SE-12649

P.M. But, even if his prior statement is read to put him at the scene at 1:00 P.M., we would not be convinced that it was not respondent operating the helicopter, as respondent's time evidence is not entirely reliable. As noted in our prior decision (slip op. at 10), respondent's testimony at the hearing was that he was flying in the area at 11:30 A.M., not 1:00, nor has he explained the inconsistency.

Our analysis of the time of respondent's flight reflected a review and amalgamation of all the evidence. And, contrary to respondent's allegation, Sharon Kaiser was not exact about when she saw the horse, other than noting that it was while she was sweeping the store porch, and that she usually sweeps the porch within 1 1/2 hours of the 3:00 P.M. beginning of her shift. In any case, when the horse appeared at the tavern is a somewhat easier (and less significant) question to answer on this record than when the helicopter flight occurred, and her evidence does not assist that latter inquiry.

These and other matters respondent raises remain credibility questions that he presents insufficient reason to overturn.<sup>1</sup> As the Administrator notes, and looking at the evidence overall rather than minute parts of it, the overwhelming weight of the evidence supports a finding that respondent overflowed the Vickers' arena and spooked the horses. There was absolutely no evidence that there was another helicopter flying in the area that day.

Respondent also argues that we should have found the landing strip appropriate because a reconnoiter pass was made. See prior decision, footnote 19. Respondent had argued that he qualified for the exception to § 91.119 because he was landing at the time.

We noted that "to qualify for the exception, it must be shown that the landing site is appropriate."

Respondent ignores other testimony by the student pilot. Although he first testified to a reconnaissance pattern, he later denied any actual recollection of the flight. But more important, this argument misunderstands our decision. We did not

---

<sup>1</sup>Respondent also challenges our finding that his statement that he was on the phone shortly after 3:00 P.M. (and supporting phone records) is not reliable proof he was at home and not the pilot of the helicopter. But his explanation that he was on the phone to his sister at the time he is alleged to have been flying is supported no better on petition than it was at the hearing. And, as the Administrator notes, it is possible that, if he had been at the Bellingham airstrip at 2:00 or earlier, he could be home shortly after 3:00 P.M. (see Tr. at 768, according to respondent it takes approximately 50 minutes to travel from the house to the takeoff point and prepare the helicopter for takeoff).

hold that the landing site was inappropriate because no reconnoiter pass was made. The finding regarding the reconnoiter pass was in support of our conclusion that respondent had not taken sufficient precautions. We had no need to reach the issue in the context of the propriety of the landing site. The basis for our finding that the landing exception did not apply was our conclusion that respondent had not shown it necessary to overfly the Vickers' arena at extremely low altitude to land a helicopter at the hangar. He does not address this matter in his petition.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The petition is denied; and
2. The 30-day suspension of respondent's commercial pilot certificate shall begin 30 days from the date of service of this order.<sup>2</sup>

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above order.

---

<sup>2</sup>For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).